

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY AUGUST 21, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 3, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 755

Introduced by Senator Wolk

(Principal coauthor: Assembly Member Alejo)

(Coauthors: Senators De León, DeSaulnier, Hancock, and Yee)

February 22, 2013

An act to amend Sections 29805 and 30305 of the Penal Code, and to amend Section 8103 of the Welfare and Institutions Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 755, as amended, Wolk. Firearms: prohibited persons.

(1) Existing law, subject to exceptions, provides that any person who has been convicted of certain misdemeanors may not, within 10 years of the conviction, own, purchase, receive, possess, or have under his or her custody or control, any firearm. Under existing law, a violation of this prohibition is punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding \$1,000, or by both that imprisonment and fine. Existing law makes it a misdemeanor or a felony for a person who is prohibited from owning

or possessing a firearm pursuant to these provisions to own, possess, or have under custody or control, any ammunition or reloaded ammunition.

This bill would add to the list of misdemeanors, the conviction for which is subject to those prohibitions, misdemeanor offenses of violating the 10 year prohibition on possessing a firearm specified above.

The bill would also apply the above 10-year prohibition to a person who has been convicted of 2 or more specified misdemeanors, or 2 or more convictions of a single specified misdemeanor, in a 3-year period involving intoxication or possession of certain controlled substances for sale and would make a violation punishable as an infraction. The bill would impose a new 10-year prohibition to a person who commits another of those misdemeanors during the initial 10-year prohibition period, and would make a violation punishable as an infraction. The bill would also make it an infraction for a person prohibited from owning or possessing a firearm pursuant to these provisions to own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition. By changing the definition of a crime, and by creating new crimes, this bill would impose a state-mandated local program.

(2) Existing law prohibits certain specified individuals, including a person who has been adjudicated a danger to others as a result of a mental disorder or mental illness, a person who has been adjudicated a mentally disordered sex offender, a person who has been found not guilty by reason of insanity, or a person who has been placed under conservatorship by a court, among others, from possessing firearms or deadly weapons.

Existing law authorizes a court to order a person to obtain assisted outpatient treatment if certain criteria are met, including that the person is suffering from a mental illness and is unlikely to survive safely in the community without supervision.

This bill would prohibit a person who has been ordered by a court to obtain assisted outpatient treatment from purchasing or possessing any firearm or other deadly weapon while subject to assisted outpatient treatment. The bill would require the court to notify the Department of Justice of the order prohibiting the person from possessing a firearm or other deadly weapon within 2 days of the order, and to notify the Department of Justice when the person is no longer subject to assisted outpatient treatment. Because a violation of this provision would be a crime, this bill would impose a state-mandated local program.

(3) Existing constitutional provisions require that a statute that limits the right of access to meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by that limitation and the need for protecting that interest.

This bill would make a legislative finding and declaration relating to the necessity of treating reports to the Department of Justice as confidential in order to protect the privacy of individuals ordered to obtain assisted outpatient treatment.

(4) This bill would incorporate changes to Section 8103 of the Welfare and Institutions Code proposed by AB 1131, that would become operative on the date this bill becomes operative only if AB 1131 and this bill are both chaptered and become effective on or before January 1, 2014, and this bill is chaptered last.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that in order
2 to protect the privacy of individuals ordered to obtain assisted
3 outpatient treatment, it is necessary that reports made by a court
4 to the Department of Justice pursuant to Section 3 of this act be
5 confidential, except as provided in this act.

6 SEC. 2. Section 29805 of the Penal Code is amended to read:

7 29805. (a) Except as provided in Section 29855 or subdivision
8 (a) of Section 29800, any person who has been convicted of a
9 misdemeanor violation of this subdivision, Section 71, 76, 136.1,
10 136.5, or 140, subdivision (d) of Section 148, Section 171b,
11 paragraph (1) of subdivision (a) of Section 171c, Section 171d,
12 Section 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5,
13 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95,
14 subdivision (a) of former Section 12100, as that section read at
15 any time from when it was enacted by Section 3 of Chapter 1386
16 of the Statutes of 1988 to when it was repealed by Section 18 of

Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(b) Except as provided in Section 29855, any person who has been convicted of misdemeanor violations of two or more of any of the following offenses, or two or more misdemeanor violations of any one of the following offenses, within a three-year period and who, within 10 years of the second conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of an infraction, punishable by a fine not exceeding two hundred fifty dollars (\$250).

(1) Possession of a controlled substance with intent to sell in violation of Section 11357.5 of the Health and Safety Code.

(2) Possession of a controlled substance with intent to sell in violation of paragraph (1) of subdivision (b) of Section 11375 of the Health and Safety Code.

(3) Possession of a controlled substance with intent to sell in violation of Section 11379.2 of the Health and Safety Code.

(4) Section 11550 of the Health and Safety Code.

(5) Section 191.5.

(6) Subdivision (f) of Section 647.

(7) Section 23152 of the Vehicle Code.

(8) Section 23153 of the Vehicle Code.

(9) Section 23154 of the Vehicle Code.

(c) Except as provided in Section 29855, any person who is prohibited pursuant to subdivision (b) from owning, purchasing, receiving, or having in his or her custody or control any firearm, who is subsequently convicted of a misdemeanor violation of any offense specified in paragraphs (1) to (9), inclusive, of subdivision (b) during the prohibitory period specified in subdivision (b), and who, within 10 years of the subsequent conviction, owns,

1 purchases, receives, or has in possession or under custody or
2 control any firearm is guilty of an infraction, punishable by a fine
3 not exceeding two hundred fifty dollars (\$250).

4 (d) The court, on forms prescribed by the Department of Justice,
5 shall notify the department of persons subject to this section.
6 However, the prohibition in this section may be reduced,
7 eliminated, or conditioned as provided in Section 29855 or 29860.

8 SEC. 3. Section 30305 of the Penal Code is amended to read:

9 30305. (a) (1) No person prohibited from owning or
10 possessing a firearm under Chapter 2 (commencing with Section
11 29800) or Chapter 3 (commencing with Section 29900) of Division
12 9 of this title, or Section 8100 or 8103 of the Welfare and
13 Institutions Code, shall own, possess, or have under custody or
14 control, any ammunition or reloaded ammunition.

15 (2) (A) Except as provided in subparagraph (B), a violation of
16 this subdivision is punishable by imprisonment in a county jail not
17 to exceed one year or in the state prison, by a fine not to exceed
18 one thousand dollars (\$1,000), or by both the fine and
19 imprisonment.

20 (B) If the person is prohibited from owning or possessing a
21 firearm pursuant to subdivision (b) or (c) of Section 29805, a
22 violation of this subdivision is an infraction, punishable by a fine
23 not exceeding two hundred fifty dollars (\$250).

24 (b) (1) A person who is not prohibited by subdivision (a) from
25 owning, possessing, or having under the person's custody or
26 control, any ammunition or reloaded ammunition, but who is
27 enjoined from engaging in activity pursuant to an injunction issued
28 pursuant to Section 3479 of the Civil Code against that person as
29 a member of a criminal street gang, as defined in Section 186.22,
30 may not own, possess, or have under the person's custody or
31 control, any ammunition or reloaded ammunition.

32 (2) A violation of this subdivision is a misdemeanor.

33 (c) A violation of subdivision (a) or (b) is justifiable where all
34 of the following conditions are met:

35 (1) The person found the ammunition or reloaded ammunition
36 or took the ammunition or reloaded ammunition from a person
37 who was committing a crime against the person who found or took
38 the ammunition or reloaded ammunition.

39 (2) The person possessed the ammunition or reloaded
40 ammunition no longer than was necessary to deliver or transport

1 the ammunition or reloaded ammunition to a law enforcement
2 agency for that agency's disposition according to law.

3 (3) The person is prohibited from possessing any ammunition
4 or reloaded ammunition solely because that person is prohibited
5 from owning or possessing a firearm only by virtue of Chapter 2
6 (commencing with Section 29800) of Division 9 or ammunition
7 or reloaded ammunition because of subdivision (b).

8 (d) Upon the trial for violating subdivision (a) or (b), the trier
9 of fact shall determine whether the defendant is subject to the
10 exemption created by subdivision (c). The defendant has the burden
11 of proving by a preponderance of the evidence that the defendant
12 is subject to the exemption provided by subdivision (c).

13 SEC. 4. Section 8103 of the Welfare and Institutions Code is
14 amended to read:

15 8103. (a) (1) No person who after October 1, 1955, has been
16 adjudicated by a court of any state to be a danger to others as a
17 result of a mental disorder or mental illness, or who has been
18 adjudicated to be a mentally disordered sex offender, shall purchase
19 or receive, or attempt to purchase or receive, or have in his or her
20 possession, custody, or control any firearm or any other deadly
21 weapon unless there has been issued to the person a certificate by
22 the court of adjudication upon release from treatment or at a later
23 date stating that the person may possess a firearm or any other
24 deadly weapon without endangering others, and the person has
25 not, subsequent to the issuance of the certificate, again been
26 adjudicated by a court to be a danger to others as a result of a
27 mental disorder or mental illness.

28 (2) The court shall immediately notify the Department of Justice
29 of the court order finding the individual to be a person described
30 in paragraph (1). The court shall also notify the Department of
31 Justice of any certificate issued as described in paragraph (1).

32 (b) (1) No person who has been found, pursuant to Section
33 1026 of the Penal Code or the law of any other state or the United
34 States, not guilty by reason of insanity of murder, mayhem, a
35 violation of Section 207, 209, or 209.5 of the Penal Code in which
36 the victim suffers intentionally inflicted great bodily injury,
37 carjacking or robbery in which the victim suffers great bodily
38 injury, a violation of Section 451 or 452 of the Penal Code
39 involving a trailer coach, as defined in Section 635 of the Vehicle
40 Code, or any dwelling house, a violation of paragraph (1) or (2)

1 of subdivision (a) of Section 262 or paragraph (2) or (3) of
2 subdivision (a) of Section 261 of the Penal Code, a violation of
3 Section 459 of the Penal Code in the first degree, assault with
4 intent to commit murder, a violation of Section 220 of the Penal
5 Code in which the victim suffers great bodily injury, a violation
6 of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the
7 Penal Code, or of a felony involving death, great bodily injury, or
8 an act which poses a serious threat of bodily harm to another
9 person, or a violation of the law of any other state or the United
10 States that includes all the elements of any of the above felonies
11 as defined under California law, shall purchase or receive, or
12 attempt to purchase or receive, or have in his or her possession or
13 under his or her custody or control any firearm or any other deadly
14 weapon.

15 (2) The court shall immediately notify the Department of Justice
16 of the court order finding the person to be a person described in
17 paragraph (1).

18 (c) (1) No person who has been found, pursuant to Section 1026
19 of the Penal Code or the law of any other state or the United States,
20 not guilty by reason of insanity of any crime other than those
21 described in subdivision (b) shall purchase or receive, or attempt
22 to purchase or receive, or shall have in his or her possession,
23 custody, or control any firearm or any other deadly weapon unless
24 the court of commitment has found the person to have recovered
25 sanity, pursuant to Section 1026.2 of the Penal Code or the law of
26 any other state or the United States.

27 (2) The court shall immediately notify the Department of Justice
28 of the court order finding the person to be a person described in
29 paragraph (1). The court shall also notify the Department of Justice
30 when it finds that the person has recovered his or her sanity.

31 (d) (1) No person found by a court to be mentally incompetent
32 to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code
33 or the law of any other state or the United States, shall purchase
34 or receive, or attempt to purchase or receive, or shall have in his
35 or her possession, custody, or control, any firearm or any other
36 deadly weapon, unless there has been a finding with respect to the
37 person of restoration to competence to stand trial by the committing
38 court, pursuant to Section 1372 of the Penal Code or the law of
39 any other state or the United States.

1 (2) The court shall immediately notify the Department of Justice
2 of the court order finding the person to be mentally incompetent
3 as described in paragraph (1). The court shall also notify the
4 Department of Justice when it finds that the person has recovered
5 his or her competence.

6 (e) (1) No person who has been placed under conservatorship
7 by a court, pursuant to Section 5350 or the law of any other state
8 or the United States, because the person is gravely disabled as a
9 result of a mental disorder or impairment by chronic alcoholism,
10 shall purchase or receive, or attempt to purchase or receive, or
11 shall have in his or her possession, custody, or control, any firearm
12 or any other deadly weapon while under the conservatorship if, at
13 the time the conservatorship was ordered or thereafter, the court
14 which imposed the conservatorship found that possession of a
15 firearm or any other deadly weapon by the person would present
16 a danger to the safety of the person or to others. Upon placing any
17 person under conservatorship, and prohibiting firearm or any other
18 deadly weapon possession by the person, the court shall notify the
19 person of this prohibition.

20 (2) The court shall immediately notify the Department of Justice
21 of the court order placing the person under conservatorship and
22 prohibiting firearm or any other deadly weapon possession by the
23 person as described in paragraph (1). The notice shall include the
24 date the conservatorship was imposed and the date the
25 conservatorship is to be terminated. If the conservatorship is
26 subsequently terminated before the date listed in the notice to the
27 Department of Justice or the court subsequently finds that
28 possession of a firearm or any other deadly weapon by the person
29 would no longer present a danger to the safety of the person or
30 others, the court shall immediately notify the Department of Justice.

31 (3) All information provided to the Department of Justice
32 pursuant to paragraph (2) shall be kept confidential, separate, and
33 apart from all other records maintained by the Department of
34 Justice, and shall be used only to determine eligibility to purchase
35 or possess firearms or other deadly weapons. Any person who
36 knowingly furnishes that information for any other purpose is
37 guilty of a misdemeanor. All the information concerning any person
38 shall be destroyed upon receipt by the Department of Justice of
39 notice of the termination of conservatorship as to that person
40 pursuant to paragraph (2).

(f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (5), found that the people of the State of California have not met their burden pursuant to paragraph (6).

(2) (A) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the Department of Justice, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report submitted pursuant to this paragraph shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(B) Commencing July 1, 2012, facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a form for a request for a hearing. The Department of Justice shall prescribe the form. Where the person requests a hearing at the time of discharge, the facility shall forward the form to the superior court unless the person states that he or she will submit the form to the superior court.

1 (4) The Department of Justice shall provide the form upon
2 request to any person described in paragraph (1). The Department
3 of Justice shall also provide the form to the superior court in each
4 county. A person described in paragraph (1) may make a single
5 request for a hearing at any time during the five-year period. The
6 request for hearing shall be made on the form prescribed by the
7 department or in a document that includes equivalent language.

8 (5) Any person who is subject to paragraph (1) who has
9 requested a hearing from the superior court of his or her county
10 of residence for an order that he or she may own, possess, control,
11 receive, or purchase firearms shall be given a hearing. The clerk
12 of the court shall set a hearing date and notify the person, the
13 Department of Justice, and the district attorney. The people of the
14 State of California shall be the plaintiff in the proceeding and shall
15 be represented by the district attorney. Upon motion of the district
16 attorney, or on its own motion, the superior court may transfer the
17 hearing to the county in which the person resided at the time of
18 his or her detention, the county in which the person was detained,
19 or the county in which the person was evaluated or treated. Within
20 seven days after the request for a hearing, the Department of Justice
21 shall file copies of the reports described in this section with the
22 superior court. The reports shall be disclosed upon request to the
23 person and to the district attorney. The court shall set the hearing
24 within 30 days of receipt of the request for a hearing. Upon
25 showing good cause, the district attorney shall be entitled to a
26 continuance not to exceed 14 days after the district attorney was
27 notified of the hearing date by the clerk of the court. If additional
28 continuances are granted, the total length of time for continuances
29 shall not exceed 60 days. The district attorney may notify the
30 county mental health director of the hearing who shall provide
31 information about the detention of the person that may be relevant
32 to the court and shall file that information with the superior court.
33 That information shall be disclosed to the person and to the district
34 attorney. The court, upon motion of the person subject to paragraph
35 (1) establishing that confidential information is likely to be
36 discussed during the hearing that would cause harm to the person,
37 shall conduct the hearing in camera with only the relevant parties
38 present, unless the court finds that the public interest would be
39 better served by conducting the hearing in public. Notwithstanding
40 any other law, declarations, police reports, including criminal

1 history information, and any other material and relevant evidence
2 that is not excluded under Section 352 of the Evidence Code shall
3 be admissible at the hearing under this section.

4 (6) The people shall bear the burden of showing by a
5 preponderance of the evidence that the person would not be likely
6 to use firearms in a safe and lawful manner.

7 (7) If the court finds at the hearing set forth in paragraph (5)
8 that the people have not met their burden as set forth in paragraph
9 (6), the court shall order that the person shall not be subject to the
10 five-year prohibition in this section on the ownership, control,
11 receipt, possession, or purchase of firearms. A copy of the order
12 shall be submitted to the Department of Justice. Upon receipt of
13 the order, the Department of Justice shall delete any reference to
14 the prohibition against firearms from the person's state mental
15 health firearms prohibition system information.

16 (8) Where the district attorney declines or fails to go forward
17 in the hearing, the court shall order that the person shall not be
18 subject to the five-year prohibition required by this subdivision
19 on the ownership, control, receipt, possession, or purchase of
20 firearms. A copy of the order shall be submitted to the Department
21 of Justice. Upon receipt of the order, the Department of Justice
22 shall, within 15 days, delete any reference to the prohibition against
23 firearms from the person's state mental health firearms prohibition
24 system information.

25 (9) Nothing in this subdivision shall prohibit the use of reports
26 filed pursuant to this section to determine the eligibility of persons
27 to own, possess, control, receive, or purchase a firearm if the person
28 is the subject of a criminal investigation, a part of which involves
29 the ownership, possession, control, receipt, or purchase of a
30 firearm.

31 (g) (1) No person who has been certified for intensive treatment
32 under Section 5250, 5260, or 5270.15 shall own, possess, control,
33 receive, or purchase, or attempt to own, possess, control, receive,
34 or purchase, any firearm for a period of five years.

35 Any person who meets the criteria contained in subdivision (e)
36 or (f) who is released from intensive treatment shall nevertheless,
37 if applicable, remain subject to the prohibition contained in
38 subdivision (e) or (f).

39 (2) (A) For each person certified for intensive treatment under
40 paragraph (1), the facility shall immediately submit a report to the

1 Department of Justice, on a form prescribed by the department,
2 containing information regarding the person, including, but not
3 limited to, the legal identity of the person and the legal grounds
4 upon which the person was certified. Any report submitted pursuant
5 to this paragraph shall only be used for the purposes specified in
6 paragraph (2) of subdivision (f).

7 (B) Commencing July 1, 2012, facilities shall submit reports
8 pursuant to this paragraph exclusively by electronic means, in a
9 manner prescribed by the Department of Justice.

10 (3) Prior to, or concurrent with, the discharge of each person
11 certified for intensive treatment under paragraph (1), the facility
12 shall inform the person of that information specified in paragraph
13 (3) of subdivision (f).

14 (4) Any person who is subject to paragraph (1) may petition the
15 superior court of his or her county of residence for an order that
16 he or she may own, possess, control, receive, or purchase firearms.
17 At the time the petition is filed, the clerk of the court shall set a
18 hearing date and notify the person, the Department of Justice, and
19 the district attorney. The people of the State of California shall be
20 the respondent in the proceeding and shall be represented by the
21 district attorney. Upon motion of the district attorney, or on its
22 own motion, the superior court may transfer the petition to the
23 county in which the person resided at the time of his or her
24 detention, the county in which the person was detained, or the
25 county in which the person was evaluated or treated. Within seven
26 days after receiving notice of the petition, the Department of Justice
27 shall file copies of the reports described in this section with the
28 superior court. The reports shall be disclosed upon request to the
29 person and to the district attorney. The district attorney shall be
30 entitled to a continuance of the hearing to a date of not less than
31 14 days after the district attorney was notified of the hearing date
32 by the clerk of the court. The district attorney may notify the county
33 mental health director of the petition, and the county mental health
34 director shall provide information about the detention of the person
35 that may be relevant to the court and shall file that information
36 with the superior court. That information shall be disclosed to the
37 person and to the district attorney. The court, upon motion of the
38 person subject to paragraph (1) establishing that confidential
39 information is likely to be discussed during the hearing that would
40 cause harm to the person, shall conduct the hearing in camera with

1 only the relevant parties present, unless the court finds that the
2 public interest would be better served by conducting the hearing
3 in public. Notwithstanding any other provision of law, any
4 declaration, police reports, including criminal history information,
5 and any other material and relevant evidence that is not excluded
6 under Section 352 of the Evidence Code, shall be admissible at
7 the hearing under this section. If the court finds by a preponderance
8 of the evidence that the person would be likely to use firearms in
9 a safe and lawful manner, the court may order that the person may
10 own, control, receive, possess, or purchase firearms. A copy of
11 the order shall be submitted to the Department of Justice. Upon
12 receipt of the order, the Department of Justice shall delete any
13 reference to the prohibition against firearms from the person's
14 state mental health firearms prohibition system information.

15 (h) For all persons identified in subdivisions (f) and (g), facilities
16 shall report to the Department of Justice as specified in those
17 subdivisions, except facilities shall not report persons under
18 subdivision (g) if the same persons previously have been reported
19 under subdivision (f).

20 Additionally, all facilities shall report to the Department of
21 Justice upon the discharge of persons from whom reports have
22 been submitted pursuant to subdivision (f) or (g). However, a report
23 shall not be filed for persons who are discharged within 31 days
24 after the date of admission.

25 (i) (1) No person who has been ordered by a court to obtain
26 assisted outpatient treatment pursuant to Article 9 (commencing
27 with Section 5345) of Chapter 2 of Part 1 of Division 5 shall
28 purchase or receive, or attempt to purchase or receive, or shall
29 have in his or her possession, custody, or control, any firearm or
30 any other deadly weapon while subject to assisted outpatient
31 treatment. Upon placing any person under assisted outpatient
32 treatment, the court shall notify the person of this prohibition.

33 (2) The court shall notify the Department of Justice of the court
34 order placing the person in assisted outpatient treatment and
35 prohibiting firearm or any other deadly weapon possession by the
36 person described in paragraph (1) within two days of the order.
37 The court shall also notify the Department of Justice when the
38 person subject to paragraph (1) is no longer subject to assisted
39 outpatient treatment. Any report submitted pursuant to this
40 paragraph shall be confidential, except for purposes of the court

1 proceedings specified in this subdivision and for purposes of
2 determining the eligibility of the person to own, possess, control,
3 receive, or purchase a firearm.

4 (j) Every person who owns or possesses or has under his or her
5 custody or control, or purchases or receives, or attempts to purchase
6 or receive, any firearm or any other deadly weapon in violation of
7 this section shall be punished by imprisonment pursuant to
8 subdivision (h) of Section 1170 of the Penal Code or in a county
9 jail for not more than one year.

10 (k) “Deadly weapon,” as used in this section, has the meaning
11 prescribed by Section 8100.

12 SEC. 4.5. Section 8103 of the Welfare and Institutions Code
13 is amended to read:

14 8103. (a) (1) No person who after October 1, 1955, has been
15 adjudicated by a court of any state to be a danger to others as a
16 result of a mental disorder or mental illness, or who has been
17 adjudicated to be a mentally disordered sex offender, shall purchase
18 or receive, or attempt to purchase or receive, or have in his or her
19 possession, custody, or control any firearm or any other deadly
20 weapon unless there has been issued to the person a certificate by
21 the court of adjudication upon release from treatment or at a later
22 date stating that the person may possess a firearm or any other
23 deadly weapon without endangering others, and the person has
24 not, subsequent to the issuance of the certificate, again been
25 adjudicated by a court to be a danger to others as a result of a
26 mental disorder or mental illness.

27 (2) The court shall ~~immediately~~ notify the Department of Justice
28 of the court order finding the individual to be a person described
29 in paragraph (1) *as soon as possible, but not later than two court*
30 *days after issuing the order*. The court shall also immediately
31 notify the Department of Justice of any certificate issued as
32 described in paragraph (1) *as soon as possible, but not later than*
33 *two court days after issuing the certificate*.

34 (b) (1) No person who has been found, pursuant to Section
35 1026 of the Penal Code or the law of any other state or the United
36 States, not guilty by reason of insanity of murder, mayhem, a
37 violation of Section 207, 209, or 209.5 of the Penal Code in which
38 the victim suffers intentionally inflicted great bodily injury,
39 carjacking or robbery in which the victim suffers great bodily
40 injury, a violation of Section 451 or 452 of the Penal Code

1 involving a trailer coach, as defined in Section 635 of the Vehicle
2 Code, or any dwelling house, a violation of paragraph (1) or (2)
3 of subdivision (a) of Section 262 or paragraph (2) or (3) of
4 subdivision (a) of Section 261 of the Penal Code, a violation of
5 Section 459 of the Penal Code in the first degree, assault with
6 intent to commit murder, a violation of Section 220 of the Penal
7 Code in which the victim suffers great bodily injury, a violation
8 of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the
9 Penal Code, or of a felony involving death, great bodily injury, or
10 an act which poses a serious threat of bodily harm to another
11 person, or a violation of the law of any other state or the United
12 States that includes all the elements of any of the above felonies
13 as defined under California law, shall purchase or receive, or
14 attempt to purchase or receive, or have in his or her possession or
15 under his or her custody or control any firearm or any other deadly
16 weapon.

17 (2) The court shall ~~immediately~~ notify the Department of Justice
18 of the court order finding the person to be a person described in
19 paragraph (1) *as soon as possible, but not later than two court*
20 *days after issuing the order.*

21 (c) (1) No person who has been found, pursuant to Section 1026
22 of the Penal Code or the law of any other state or the United States,
23 not guilty by reason of insanity of any crime other than those
24 described in subdivision (b) shall purchase or receive, or attempt
25 to purchase or receive, or shall have in his or her possession,
26 custody, or control any firearm or any other deadly weapon unless
27 the court of commitment has found the person to have recovered
28 sanity, pursuant to Section 1026.2 of the Penal Code or the law of
29 any other state or the United States.

30 (2) The court shall ~~immediately~~ notify the Department of Justice
31 of the court order finding the person to be a person described in
32 paragraph (1) *as soon as possible, but not later than two court*
33 *days after issuing the order.* The court shall also notify the
34 Department of Justice when it finds that the person has recovered
35 his or her sanity *as soon as possible, but not later than two court*
36 *days after making the finding.*

37 (d) (1) No person found by a court to be mentally incompetent
38 to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code
39 or the law of any other state or the United States, shall purchase
40 or receive, or attempt to purchase or receive, or shall have in his

1 or her possession, custody, or control, any firearm or any other
2 deadly weapon, unless there has been a finding with respect to the
3 person of restoration to competence to stand trial by the committing
4 court, pursuant to Section 1372 of the Penal Code or the law of
5 any other state or the United States.

6 (2) The court shall ~~immediately~~ notify the Department of Justice
7 of the court order finding the person to be mentally incompetent
8 as described in paragraph (1) *as soon as possible, but not later*
9 *than two court days after issuing the order*. The court shall also
10 notify the Department of Justice when it finds that the person has
11 recovered his or her competence *as soon as possible, but not later*
12 *than two court days after making the finding*.

13 (e) (1) No person who has been placed under conservatorship
14 by a court, pursuant to Section 5350 or the law of any other state
15 or the United States, because the person is gravely disabled as a
16 result of a mental disorder or impairment by chronic alcoholism,
17 shall purchase or receive, or attempt to purchase or receive, or
18 shall have in his or her possession, custody, or control, any firearm
19 or any other deadly weapon while under the conservatorship if, at
20 the time the conservatorship was ordered or thereafter, the court
21 which imposed the conservatorship found that possession of a
22 firearm or any other deadly weapon by the person would present
23 a danger to the safety of the person or to others. Upon placing any
24 person under conservatorship, and prohibiting firearm or any other
25 deadly weapon possession by the person, the court shall notify the
26 person of this prohibition.

27 (2) The court shall ~~immediately~~ notify the Department of Justice
28 of the court order placing the person under conservatorship and
29 prohibiting firearm or any other deadly weapon possession by the
30 person as described in paragraph (1) *as soon as possible, but not*
31 *later than two court days after placing the person under*
32 *conservatorship*. The notice shall include the date the
33 conservatorship was imposed and the date the conservatorship is
34 to be terminated. If the conservatorship is subsequently terminated
35 before the date listed in the notice to the Department of Justice or
36 the court subsequently finds that possession of a firearm or any
37 other deadly weapon by the person would no longer present a
38 danger to the safety of the person or others, the court shall
39 ~~immediately~~ notify the Department of Justice *as soon as possible*,

1 *but not later than two court days after terminating the*
2 *conservatorship.*

3 (3) All information provided to the Department of Justice
4 pursuant to paragraph (2) shall be kept confidential, separate, and
5 apart from all other records maintained by the Department of
6 Justice, and shall be used only to determine eligibility to purchase
7 or possess firearms or other deadly weapons. Any person who
8 knowingly furnishes that information for any other purpose is
9 guilty of a misdemeanor. All the information concerning any person
10 shall be destroyed upon receipt by the Department of Justice of
11 notice of the termination of conservatorship as to that person
12 pursuant to paragraph (2).

13 (f) (1) No person who has been (A) taken into custody as
14 provided in Section 5150 because that person is a danger to himself,
15 herself, or to others, (B) assessed within the meaning of Section
16 5151, and (C) admitted to a designated facility within the meaning
17 of Sections 5151 and 5152 because that person is a danger to
18 himself, herself, or others, shall own, possess, control, receive, or
19 purchase, or attempt to own, possess, control, receive, or purchase
20 any firearm for a period of five years after the person is released
21 from the facility. A person described in the preceding sentence,
22 however, may own, possess, control, receive, or purchase, or
23 attempt to own, possess, control, receive, or purchase any firearm
24 if the superior court has, pursuant to paragraph (5), found that the
25 people of the State of California have not met their burden pursuant
26 to paragraph (6).

27 (2) (A) For each person subject to this subdivision, the facility
28 shall ~~immediately, on the date,~~ *within 24 hours of the time* of
29 admission, submit a report to the Department of Justice, on a form
30 prescribed by the Department of Justice, containing information
31 that includes, but is not limited to, the identity of the person and
32 the legal grounds upon which the person was admitted to the
33 facility.

34 Any report submitted pursuant to this paragraph shall be
35 confidential, except for purposes of the court proceedings described
36 in this subdivision and for determining the eligibility of the person
37 to own, possess, control, receive, or purchase a firearm.

38 (B) Commencing July 1, 2012, facilities shall submit reports
39 pursuant to this paragraph exclusively by electronic means, in a
40 manner prescribed by the Department of Justice.

1 (3) Prior to, or concurrent with, the discharge, the facility shall
2 inform a person subject to this subdivision that he or she is
3 prohibited from owning, possessing, controlling, receiving, or
4 purchasing any firearm for a period of five years. Simultaneously,
5 the facility shall inform the person that he or she may request a
6 hearing from a court, as provided in this subdivision, for an order
7 permitting the person to own, possess, control, receive, or purchase
8 a firearm. The facility shall provide the person with a form for a
9 request for a hearing. The Department of Justice shall prescribe
10 the form. Where the person requests a hearing at the time of
11 discharge, the facility shall forward the form to the superior court
12 unless the person states that he or she will submit the form to the
13 superior court.

14 (4) The Department of Justice shall provide the form upon
15 request to any person described in paragraph (1). The Department
16 of Justice shall also provide the form to the superior court in each
17 county. A person described in paragraph (1) may make a single
18 request for a hearing at any time during the five-year period. The
19 request for hearing shall be made on the form prescribed by the
20 department or in a document that includes equivalent language.

21 (5) Any person who is subject to paragraph (1) who has
22 requested a hearing from the superior court of his or her county
23 of residence for an order that he or she may own, possess, control,
24 receive, or purchase firearms shall be given a hearing. The clerk
25 of the court shall set a hearing date and notify the person, the
26 Department of Justice, and the district attorney. The people of the
27 State of California shall be the plaintiff in the proceeding and shall
28 be represented by the district attorney. Upon motion of the district
29 attorney, or on its own motion, the superior court may transfer the
30 hearing to the county in which the person resided at the time of
31 his or her detention, the county in which the person was detained,
32 or the county in which the person was evaluated or treated. Within
33 seven days after the request for a hearing, the Department of Justice
34 shall file copies of the reports described in this section with the
35 superior court. The reports shall be disclosed upon request to the
36 person and to the district attorney. The court shall set the hearing
37 within 30 days of receipt of the request for a hearing. Upon
38 showing good cause, the district attorney shall be entitled to a
39 continuance not to exceed 14 days after the district attorney was
40 notified of the hearing date by the clerk of the court. If additional

1 continuances are granted, the total length of time for continuances
2 shall not exceed 60 days. The district attorney may notify the
3 county mental health director of the hearing who shall provide
4 information about the detention of the person that may be relevant
5 to the court and shall file that information with the superior court.
6 That information shall be disclosed to the person and to the district
7 attorney. The court, upon motion of the person subject to paragraph
8 (1) establishing that confidential information is likely to be
9 discussed during the hearing that would cause harm to the person,
10 shall conduct the hearing in camera with only the relevant parties
11 present, unless the court finds that the public interest would be
12 better served by conducting the hearing in public. Notwithstanding
13 any other law, declarations, police reports, including criminal
14 history information, and any other material and relevant evidence
15 that is not excluded under Section 352 of the Evidence Code shall
16 be admissible at the hearing under this section.

17 (6) The people shall bear the burden of showing by a
18 preponderance of the evidence that the person would not be likely
19 to use firearms in a safe and lawful manner.

20 (7) If the court finds at the hearing set forth in paragraph (5)
21 that the people have not met their burden as set forth in paragraph
22 (6), the court shall order that the person shall not be subject to the
23 five-year prohibition in this section on the ownership, control,
24 receipt, possession, or purchase of firearms, and that person shall
25 comply with the procedure described in Chapter 2 (commencing
26 with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal
27 Code for the return of any firearms. A copy of the order shall be
28 submitted to the Department of Justice. Upon receipt of the order,
29 the Department of Justice shall delete any reference to the
30 prohibition against firearms from the person's state mental health
31 firearms prohibition system information.

32 (8) Where the district attorney declines or fails to go forward
33 in the hearing, the court shall order that the person shall not be
34 subject to the five-year prohibition required by this subdivision
35 on the ownership, control, receipt, possession, or purchase of
36 firearms. A copy of the order shall be submitted to the Department
37 of Justice. Upon receipt of the order, the Department of Justice
38 shall, within 15 days, delete any reference to the prohibition against
39 firearms from the person's state mental health firearms prohibition
40 system information, and that person shall comply with the

1 procedure described in Chapter 2 (commencing with Section
2 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for
3 the return of any firearms.

4 (9) Nothing in this subdivision shall prohibit the use of reports
5 filed pursuant to this section to determine the eligibility of persons
6 to own, possess, control, receive, or purchase a firearm if the person
7 is the subject of a criminal investigation, a part of which involves
8 the ownership, possession, control, receipt, or purchase of a
9 firearm.

10 (g) (1) No person who has been certified for intensive treatment
11 under Section 5250, 5260, or 5270.15 shall own, possess, control,
12 receive, or purchase, or attempt to own, possess, control, receive,
13 or purchase, any firearm for a period of five years.

14 Any person who meets the criteria contained in subdivision (e)
15 or (f) who is released from intensive treatment shall nevertheless,
16 if applicable, remain subject to the prohibition contained in
17 subdivision (e) or (f).

18 (2) (A) For each person certified for intensive treatment under
19 paragraph (1), the facility shall ~~immediately~~, *within 24 hours of*
20 *the certification*, submit a report to the Department of Justice, on
21 a form prescribed by the department, containing information
22 regarding the person, including, but not limited to, the legal identity
23 of the person and the legal grounds upon which the person was
24 certified. Any report submitted pursuant to this paragraph shall
25 only be used for the purposes specified in paragraph (2) of
26 subdivision (f).

27 (B) Commencing July 1, 2012, facilities shall submit reports
28 pursuant to this paragraph exclusively by electronic means, in a
29 manner prescribed by the Department of Justice.

30 (3) Prior to, or concurrent with, the discharge of each person
31 certified for intensive treatment under paragraph (1), the facility
32 shall inform the person of that information specified in paragraph
33 (3) of subdivision (f).

34 (4) Any person who is subject to paragraph (1) may petition the
35 superior court of his or her county of residence for an order that
36 he or she may own, possess, control, receive, or purchase firearms.
37 At the time the petition is filed, the clerk of the court shall set a
38 hearing date and notify the person, the Department of Justice, and
39 the district attorney. The people of the State of California shall be
40 the respondent in the proceeding and shall be represented by the

1 district attorney. Upon motion of the district attorney, or on its
2 own motion, the superior court may transfer the petition to the
3 county in which the person resided at the time of his or her
4 detention, the county in which the person was detained, or the
5 county in which the person was evaluated or treated. Within seven
6 days after receiving notice of the petition, the Department of Justice
7 shall file copies of the reports described in this section with the
8 superior court. The reports shall be disclosed upon request to the
9 person and to the district attorney. The district attorney shall be
10 entitled to a continuance of the hearing to a date of not less than
11 14 days after the district attorney was notified of the hearing date
12 by the clerk of the court. The district attorney may notify the county
13 mental health director of the petition, and the county mental health
14 director shall provide information about the detention of the person
15 that may be relevant to the court and shall file that information
16 with the superior court. That information shall be disclosed to the
17 person and to the district attorney. The court, upon motion of the
18 person subject to paragraph (1) establishing that confidential
19 information is likely to be discussed during the hearing that would
20 cause harm to the person, shall conduct the hearing in camera with
21 only the relevant parties present, unless the court finds that the
22 public interest would be better served by conducting the hearing
23 in public. Notwithstanding any other provision of law, any
24 declaration, police reports, including criminal history information,
25 and any other material and relevant evidence that is not excluded
26 under Section 352 of the Evidence Code, shall be admissible at
27 the hearing under this section. If the court finds by a preponderance
28 of the evidence that the person would be likely to use firearms in
29 a safe and lawful manner, the court may order that the person may
30 own, control, receive, possess, or purchase firearms, and that person
31 shall comply with the procedure described in Chapter 2
32 (commencing with Section 33850) of Division 11 of Title 4 of Part
33 6 of the Penal Code for the return of any firearms. A copy of the
34 order shall be submitted to the Department of Justice. Upon receipt
35 of the order, the Department of Justice shall delete any reference
36 to the prohibition against firearms from the person's state mental
37 health firearms prohibition system information.

38 (h) (1) For all persons identified in subdivisions (f) and (g),
39 facilities shall report to the Department of Justice as specified in
40 those subdivisions, except facilities shall not report persons under

1 subdivision (g) if the same persons previously have been reported
2 under subdivision (f).

3 (2) Additionally, all facilities shall report to the Department of
4 Justice upon the discharge of persons from whom reports have
5 been submitted pursuant to subdivision (f) or (g). However, a report
6 shall not be filed for persons who are discharged within 31 days
7 after the date of admission.

8 (i) (1) No person who has been ordered by a court to obtain
9 assisted outpatient treatment pursuant to Article 9 (commencing
10 with Section 5345) of Chapter 2 of Part 1 of Division 5 shall
11 purchase or receive, or attempt to purchase or receive, or shall
12 have in his or her possession, custody, or control, any firearm or
13 any other deadly weapon while subject to assisted outpatient
14 treatment. Upon placing any person under assisted outpatient
15 treatment, the court shall notify the person of this prohibition.

16 (2) The court shall notify the Department of Justice of the court
17 order placing the person in assisted outpatient treatment and
18 prohibiting firearm or any other deadly weapon possession by the
19 person described in paragraph (1) within two days of the order.
20 The court shall also notify the Department of Justice when the
21 person subject to paragraph (1) is no longer subject to assisted
22 outpatient treatment. Any report submitted pursuant to this
23 paragraph shall be confidential, except for purposes of the court
24 proceedings specified in this subdivision and for purposes of
25 determining the eligibility of the person to own, possess, control,
26 receive, or purchase a firearm.

27 (j) Every person who owns or possesses or has under his or her
28 custody or control, or purchases or receives, or attempts to purchase
29 or receive, any firearm or any other deadly weapon in violation of
30 this section shall be punished by imprisonment pursuant to
31 subdivision (h) of Section 1170 of the Penal Code or in a county
32 jail for not more than one year.

33 (k) “Deadly weapon,” as used in this section, has the meaning
34 prescribed by Section 8100.

35 ~~(l) For purposes of this section, “immediately” means a period~~
36 ~~of time not exceeding 24 hours.~~

37 ~~(m)~~

38 (l) Any notice or report required to be submitted to the
39 Department of Justice pursuant to this section shall be submitted

1 in an electronic format, in a manner prescribed by the Department
2 of Justice.

3 SEC. 5. Section 4.5 of this bill incorporates amendments to
4 Section 8103 of the Welfare and Institutions Code proposed by
5 both this bill and Assembly Bill 1131. It shall only become
6 operative if (1) both bills are enacted and become effective on or
7 before January 1, 2014, (2) each bill amends Section 8103 of the
8 Welfare and Institutions Code, and (3) this bill is enacted after
9 Assembly Bill 1131, in which case Section 4 of this bill shall not
10 become operative.

11 SEC. 6. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.